

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 948

Introduced by Business and Labor Committee:
Vrtiska, 1, Chairperson; Burling, 33; Combs, 32;
Kremer, 34; Preister, 5

Read first time January 9, 2004

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to boiler inspection; to amend sections 48-719,
2 48-720, 48-723 to 48-725, 48-728 to 48-733, 48-735.01 to
3 48-741, and 48-743, Reissue Revised Statutes of Nebraska,
4 and sections 48-721, 48-722, 48-726, 48-727, and 81-401,
5 Revised Statutes Supplement, 2002; to rename an act, a
6 fund, and a board; to redefine terms; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-719, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-719. Sections 48-719 to 48-743 shall be known and may
4 be cited as the Boiler and Pressure Vessel Inspection Act.

5 Sec. 2. Section 48-720, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 48-720. As used in the Boiler and Pressure Vessel
8 Inspection Act, unless the context otherwise requires:

9 (1) Board means the Boiler and Pressure Vessel Safety
10 Code Advisory Board;

11 (2) Boiler means a closed vessel in which water or other
12 liquid is heated, steam or vapor is generated, steam or vapor is
13 superheated, or any combination thereof, under pressure or vacuum,
14 for internal or external use to itself, by the direct application
15 of heat and an unfired pressure vessel in which the pressure is
16 obtained from an external source or by the application of heat from
17 an indirect or direct source. ~~Boiler includes a fired unit for~~
18 ~~heating or vaporizing liquids other than water only when such unit~~
19 ~~is separate from processing systems and complete within itself, and~~
20 The term boiler includes fired units for heating or vaporizing
21 liquids other than water but does not include fired process heaters
22 and systems. The term boiler also includes the apparatus used by
23 which heat is generated and all controls and safety devices
24 associated with such apparatus or the closed vessels;

25 (3) Commissioner means the Commissioner of Labor; and

26 (4) Pressure vessel means a vessel in which the pressure
27 is obtained from an external source, by the application of heat
28 from an indirect source, or from a direct source other than those

1 defined as boilers.

2 Sec. 3. Section 48-721, Revised Statutes Supplement,
3 2002, is amended to read:

4 48-721. The commissioner shall appoint a state boiler
5 inspector who shall work under the direct supervision of the
6 commissioner or his or her designee and devote his or her full time
7 to the duties of the office. The person so appointed shall (1) be
8 a practical boilermaker, technical engineer, operating engineer, or
9 boiler inspector and hold a commission from the National Board of
10 Boiler and Pressure Vessel Inspectors with an "A" endorsement. The
11 state boiler inspector shall also either hold a "B" endorsement to
12 his or her commission or acquire a "B" endorsement within eighteen
13 months of appointment, (2) be qualified by not less than ten years'
14 experience in the construction, installation, repair, inspection,
15 or operation of boilers, pressure vessels, steam generators, and
16 superheaters, (3) have a knowledge of their operation and use for
17 the generating of steam for power, heating, or other purposes, and
18 (4) neither directly nor indirectly be interested in the
19 manufacture, ownership, or agency of the same. The commissioner
20 may appoint deputy inspectors as necessary to carry out the Boiler
21 and Pressure Vessel Inspection Act. Deputy inspectors shall hold a
22 commission from the National Board of Boiler and Pressure Vessel
23 Inspectors or acquire the same within twelve months of appointment.
24 Such deputy inspectors shall otherwise be subject to and governed
25 by the same rules and regulations applicable to and governing the
26 acts and conduct of the state boiler inspector. Before entering
27 upon his or her duties under the Boiler and Pressure Vessel
28 Inspection Act, the state boiler inspector and each deputy

1 inspector shall be bonded under the blanket surety bond required by
2 section 11-201.

3 Sec. 4. Section 48-722, Revised Statutes Supplement,
4 2002, is amended to read:

5 48-722. (1) Except as provided in subsection (2) of this
6 section, the state boiler inspector shall inspect or cause to be
7 inspected at least once every twelve months all boilers and
8 pressure vessels required to be inspected by the Boiler and
9 Pressure Vessel Inspection Act to determine whether the boilers or
10 pressure vessels are in a safe and satisfactory condition and
11 properly constructed and maintained for the purpose for which the
12 boiler or pressure vessel is used, except that (a) hobby boilers,
13 steam farm traction engines, portable and stationary show engines,
14 and portable and stationary show boilers, which are not otherwise
15 exempted from the act pursuant to section 48-726, shall be subject
16 to inspection at least once every twenty-four months and (b) the
17 commissioner may, by rule and regulation, establish inspection
18 periods for pressure vessels of more than twelve months, but not to
19 exceed the inspection period recommended in the National Board
20 Inspection Code or the American Petroleum Institute Pressure Vessel
21 Inspection Code API-510 for pressure vessels being used for similar
22 purposes. No boilers or pressure vessels required to be inspected
23 by the act shall be operated without valid and current
24 certification pursuant to rules and regulations adopted and
25 promulgated by the commissioner in accordance with the requirements
26 of the Administrative Procedure Act. The owner of any boiler or
27 pressure vessel installed after September 2, 1973, shall file a
28 manufacturer's data report covering the construction of such boiler

1 or pressure vessel with the state boiler inspector. Such reports
2 shall be used to assist the state boiler inspector in the
3 certification of boilers and pressure vessels. No boiler or
4 pressure vessel required to be inspected by the Boiler and Pressure
5 Vessel Inspection Act shall be operated at any type of public
6 gathering or show without first being inspected and certified as to
7 its safety by the state boiler inspector. Antique engines with
8 boilers may be brought into the state from other states without
9 inspection, but inspection as provided in this section shall be
10 made and the boiler certified as safe before being operated.

11 (2) The commissioner may, by rule and regulation, waive
12 the inspection of unfired pressure vessels registered with the
13 State of Nebraska if the commissioner finds that the owner or user
14 of the unfired pressure vessel follows a safety inspection and
15 repair program that is based upon nationally recognized standards.

16 Sec. 5. Section 48-723, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-723. The commissioner and the boiler inspectors shall
19 have the right and power to enter any building or structure, public
20 or private, for the purpose of inspecting any boilers and pressure
21 vessels required to be inspected by the Boiler and Pressure Vessel
22 Inspection Act or gathering information relating to such boilers
23 and pressure vessels.

24 Sec. 6. Section 48-724, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 48-724. (1) Upon making an inspection of any boilers and
27 pressure vessels required to be inspected by the Boiler and
28 Pressure Vessel Inspection Act and upon receipt of the inspection

1 fee and certificate fee or registration fee, the boiler inspector
2 shall give to the owner or user of the boilers and pressure vessels
3 a certificate of inspection or certificate of registration upon
4 forms prescribed by the commissioner. The certificate shall be
5 posted in a place near the location of such boiler or pressure
6 vessel.

7 (2) The commissioner shall establish the amount of the
8 inspection fee, certificate fee, and registration fee by rule or
9 regulation at the level necessary to meet the costs of
10 administering the act.

11 Sec. 7. Section 48-725, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 48-725. The owner, user, or person or persons in charge
14 of any boiler or pressure vessel required to be inspected by the
15 Boiler and Pressure Vessel Inspection Act shall not allow or permit
16 a greater pressure in any unit than is stated in the certificate of
17 inspection issued by the inspector.

18 Sec. 8. Section 48-726, Revised Statutes Supplement,
19 2002, is amended to read:

20 48-726. The Boiler and Pressure Vessel Inspection Act
21 shall not apply to (1) boilers of railway locomotives subject to
22 federal inspection, (2) boilers operated and regularly inspected by
23 railway companies operating in interstate commerce, (3) boilers
24 under the jurisdiction and subject to regular periodic inspection
25 by the United States Government, (4) boilers used exclusively for
26 agricultural purposes, (5) steam heating boilers in single-family
27 residences and apartment houses with four or less units using a
28 pressure of less than fifteen pounds per square inch and having a

1 safety valve set at not higher than fifteen pounds pressure per
2 square inch, (6) heating boilers using water in single-family
3 residences and apartment houses with four or less units using a
4 pressure of less than thirty pounds per square inch and having a
5 safety valve set at not higher than thirty pounds pressure per
6 square inch, (7) fire engine boilers brought into the state for
7 temporary use in times of emergency, (8) boilers of a miniature
8 model locomotive or boat or tractor or stationary engine
9 constructed and maintained as a hobby and not for commercial use
10 and having a diameter of less than ten inches inside diameter and a
11 grate area not in excess of one and one-half square feet and that
12 are properly equipped with a safety valve, (9) hot water supply
13 boilers if none of the following limitations is exceeded: (a) Two
14 hundred thousand British thermal units of input; (b) one hundred
15 twenty gallons of nominal capacity; or (c) two hundred ten degrees
16 Fahrenheit output, (10) unfired pressure vessels not exceeding (a)
17 five cubic feet in volume or (b) a pressure of two hundred fifty
18 pounds per square inch, and (11) unfired pressure vessels owned and
19 maintained by a district or corporation organized under the
20 provisions of Chapter 70, article 6.

21 Sec. 9. Section 48-727, Revised Statutes Supplement,
22 2002, is amended to read:

23 48-727. The commissioner may adopt and promulgate rules
24 and regulations for the purpose of effectuating the Boiler and
25 Pressure Vessel Inspection Act, including rules and regulations for
26 the methods of testing equipment, the construction and installation
27 of new boilers and pressure vessels, and a schedule of inspection
28 and certificate fees for boilers and pressure vessels required to

1 be inspected by the act. Such rules and regulations may
2 incorporate by reference any portion of (1) the Boiler and Pressure
3 Vessel Code of the American Society of Mechanical Engineers, as
4 amended, (2) the National Board Inspection Code, ~~for Boilers and~~
5 ~~Pressure Vessels,~~ as amended, (3) the American Society of
6 Mechanical Engineers Code for Controls and Safety Devices for
7 Automatically Fired Boilers, as amended, concerning controls and
8 safety devices for automatically fired boilers, (4) the American
9 Petroleum Institute Pressure Vessel Inspection Code API-510, and
10 (5) the National Fire Protection Association, series 85, code for
11 controls and safety devices, including codes referenced in such
12 code. A copy of all rules and regulations adopted and promulgated
13 under the Boiler and Pressure Vessel Inspection Act, including
14 copies of all codes incorporated by reference, shall be kept on
15 file in the office of the commissioner and shall be known as the
16 Boiler and Pressure Vessel Safety Code.

17 Sec. 10. Section 48-728, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 48-728. The state boiler inspector shall investigate and
20 report to the commissioner the cause of any boiler or pressure
21 vessel explosion that may occur in the state, the loss of life, the
22 injuries sustained, the estimated loss of property, if any, and
23 such other data as may be of benefit in preventing other similar
24 explosions.

25 Sec. 11. Section 48-729, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 48-729. The state boiler inspector shall keep in the
28 office of the commissioner a complete and accurate record of the

1 name of the owner or user of any boiler or pressure vessel required
2 to be inspected by the Boiler and Pressure Vessel Inspection Act
3 and a full description of the equipment including the type,
4 dimensions, age, condition, amount of pressure allowed, and date
5 when last inspected.

6 Sec. 12. Section 48-730, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 48-730. Before any boiler or pressure vessel required to
9 be inspected by the Boiler and Pressure Vessel Inspection Act is
10 installed, a ten days' written notice of intention to install ~~the~~
11 ~~boiler~~ shall be given to the commissioner, except that the
12 commissioner may, upon application and good cause shown, waive the
13 ten-day prior notice requirement. The notice shall designate the
14 proposed place of installation, the type and capacity of the boiler
15 or pressure vessel, the use to be made of the boiler or pressure
16 vessel, the name of the company which manufactured the boiler or
17 pressure vessel, and whether the boiler or pressure vessel is new
18 or used.

19 Sec. 13. Section 48-731, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 48-731. (1) (a) The ~~Division~~ Office of Safety and Labor
22 Standards of the Department of Labor may issue a special inspector
23 commission to an inspector in the employ of a company if the
24 inspector has previously passed the examination prescribed by the
25 National Board of Boiler and Pressure Vessel Inspectors and the
26 company is an ~~insurance company authorized to insure boilers in~~
27 ~~this state against loss from explosion~~ authorized inspection agency
28 as defined in NB-369, National Board Qualifications and Duties for

1 Authorized Inspection Agencies (AIAs) Performing Inservice
2 Inspection Activities and Qualifications for Inspectors of Boilers
3 and Pressure Vessels.

4 (b) Each ~~insurance company~~ authorized inspection agency
5 which has been issued a special inspector commission under this
6 section shall submit to the state boiler inspector complete data of
7 each boiler or pressure vessel required to be inspected by the
8 Boiler and Pressure Vessel Inspection Act which is insured or
9 inspected by such company on forms approved by the commissioner.

10 (c) Insurance companies shall notify the ~~division~~
11 department of new, canceled, or suspended risks relating to insured
12 boilers or pressure vessels. Insurance companies shall notify the
13 ~~division~~ department of all boilers and pressure vessels which the
14 company insures, or any boiler or pressure vessel for which
15 insurance has been canceled, not renewed, or suspended within
16 thirty days after such action. Other authorized inspection
17 agencies shall notify the department of any new or canceled
18 agreements relating to the inspection of boilers or pressure
19 vessels.

20 (d) ~~Insurance companies~~ Authorized inspection agencies
21 shall notify the ~~division~~ department of defective boilers or
22 pressure vessels. If a special inspector, upon ~~the first~~
23 inspection, of new risk, finds that the boiler , pressure vessel,
24 or any of the appurtenances are in such condition that the
25 inspector's company refuses insurance or liability for the
26 inspection, the company shall submit a report of the defects to the
27 state boiler inspector.

28 (2) The inspection required by the act shall not be made

1 by the state boiler and pressure vessel program if (a) an annual
2 inspection is made under a city ordinance which meets the standards
3 set forth in the act, (b) a certificate of inspection of the boiler
4 or pressure vessel is filed with the commissioner with a
5 certificate fee, and (c) the inspector for the city making such
6 inspection is required by such ordinance to either hold a
7 commission from the National Board of Boiler and Pressure Vessel
8 Inspectors commensurate with the type of inspections performed by
9 the inspector for the city or acquire the commission within twelve
10 months after appointment.

11 (3) The commissioner may, by rule and regulation, provide
12 for the issuance of a special inspector commission to an inspector
13 in the employ of a company using or operating an unfired pressure
14 vessel subject to the act for the limited purpose of inspecting
15 unfired pressure vessels used or operated by such company.

16 (4) All inspections made by a special inspector shall be
17 performed in accordance with the act, and a complete report of such
18 inspection shall be filed with the ~~division~~ department in the time,
19 manner, and form prescribed by the commissioner.

20 (5) The state boiler inspector may, at his or her
21 discretion, inspect any boiler or pressure vessel to which a
22 special inspector commission applies.

23 (6) The commissioner may, for cause, suspend or revoke
24 any special inspector commission.

25 Sec. 14. Section 48-732, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 48-732. The state boiler inspector shall notify the user
28 in writing of any boiler or pressure vessel found to be unsafe or

1 unfit for operation setting forth the nature and extent of such
2 defects and condition. The notice shall indicate whether or not
3 the boiler or pressure vessel may be used without making repair or
4 replacement of defective parts or may be used in a limited capacity
5 before repairs or replacements are made. The state boiler
6 inspector may permit the user a reasonable time to make such
7 repairs or replacements.

8 Sec. 15. Section 48-733, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 48-733. The owner, ~~or~~ user, or installer of a boiler or
11 pressure vessel required to be inspected under the Boiler and
12 Pressure Vessel Inspection Act or inspected by request of the
13 boiler owner, user, or installer shall pay a fee for such
14 inspection or inspections in accordance with the rules and
15 regulations adopted and promulgated by the commissioner. Any
16 boiler or pressure vessel required to be inspected by the act may
17 be inspected by the state boiler inspector if the owner or his or
18 her agent makes ~~written~~ a request to the state boiler inspector.
19 Fees will be imposed as required for services in support of the act
20 in accordance with rules and regulations adopted and promulgated by
21 the commissioner.

22 Sec. 16. Section 48-735.01, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 48-735.01. The Boiler and Pressure Vessel Inspection
25 Cash Fund is created. The commissioner shall use the fund for the
26 administration of the boiler and pressure vessel inspection program
27 pursuant to the Boiler and Pressure Vessel Inspection Act. The
28 fund shall consist of money appropriated to it by the Legislature

1 and fees collected in the administration of the act. Fees so
2 collected shall be remitted to the State Treasurer with an itemized
3 statement showing the source of collection. The State Treasurer
4 shall credit the fees to the fund and the money in the fund shall
5 not lapse into the General Fund. Any money in the Boiler and
6 Pressure Vessel Inspection Cash Fund available for investment shall
7 be invested by the state investment officer pursuant to the
8 Nebraska Capital Expansion Act and the Nebraska State Funds
9 Investment Act.

10 Sec. 17. Section 48-736, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 48-736. Any person, persons, corporations, and the
13 directors, managers, superintendents, and officers of such
14 corporations violating the Boiler and Pressure Vessel Inspection
15 Act shall be guilty of a Class V misdemeanor.

16 Sec. 18. Section 48-737, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-737. In addition to any and all other remedies, if
19 any owner, user, or person in charge of any boiler or pressure
20 vessel required to be inspected by the Boiler and Pressure Vessel
21 Inspection Act continues to use the same after receiving a notice
22 of defect as provided by the act, without first correcting the
23 defects or making replacements, the commissioner may apply to the
24 district court or any judge thereof by petition in equity, in an
25 action brought in the name of the state, for a writ of injunction
26 to restrain the use of the alleged defective boiler or pressure
27 vessel or if the continued operation of the boiler or pressure
28 vessel poses serious risk or harm to the general public, the state

1 boiler inspector may take those actions required to immediately
2 shut down and cause to be inoperable any boiler or pressure vessel
3 required to be inspected by the act.

4 Sec. 19. Section 48-738, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 48-738. The commissioner shall notify the owner or user
7 of the equipment in writing of the time and place of hearing of the
8 petition, as fixed by the court or judge, and serve the notice on
9 the defendant at least five days prior to the hearing in the same
10 manner as original notices are served. The general provisions
11 relating to civil practice and procedure, insofar as the same may
12 be applicable, shall govern such proceedings except as otherwise
13 provided in the Boiler and Pressure Vessel Inspection Act. In the
14 event the defendant does not appear or plead to such action,
15 default shall be entered against the defendant. The action shall
16 be tried in equity, and the court or judge shall make such order or
17 decree as the evidence warrants.

18 Sec. 20. Section 48-739, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 48-739. There is hereby created the Boiler and Pressure
21 Vessel Safety Code Advisory Board. The board shall consist of
22 seven members appointed by the Governor with the approval of the
23 Legislature. Within thirty days after July 9, 1988, the Governor
24 shall appoint three members for terms of two years and four members
25 for terms of four years. Each succeeding member of the board shall
26 be appointed for a term of four years, except that a member
27 appointed to fill a vacancy shall serve for the unexpired term. If
28 the Legislature is not in session when members of the board are

1 appointed, such members shall take office and act as appointees
2 until the next session of the Legislature.

3 Sec. 21. Section 48-740, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 48-740. The membership of the board shall consist of one
6 member who represents owners and users of boilers or pressure
7 vessels and has experience with boilers or pressure vessels, one
8 member who represents sellers of boilers or pressure vessels, one
9 member who represents the crafts involved in the construction,
10 repair, or operation of boilers or pressure vessels, one member who
11 represents the insurance industry, one member who is a licensed
12 professional engineer with experience with boilers or pressure
13 vessels, one member who represents the interest of public safety,
14 and one member who represents the public. The state boiler
15 inspector shall be a nonvoting member of the board.

16 Sec. 22. Section 48-741, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-741. The members of the board shall conduct an annual
19 meeting in July of each year, or at such other time as the board
20 determines. The board ~~and~~ shall elect a chairperson from their
21 members ~~at the annual meeting~~ to serve for a term of three years.
22 Other meetings of the board shall be held when called with at least
23 seven days' notice to all members by the chairperson of the board
24 or pursuant to a call signed by four other members. Four members
25 of the board shall constitute a quorum for the transaction of
26 business.

27 Sec. 23. Section 48-743, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 48-743. The board shall hold hearings and advise the
2 commissioner on rules and regulations for methods of testing
3 equipment and construction and installation of new boilers or
4 pressure vessels required to be inspected by the Boiler and
5 Pressure Vessel Inspection Act and for inspection and certificate
6 fees for such boilers.

7 Sec. 24. Section 81-401, Revised Statutes Supplement,
8 2002, is amended to read:

9 81-401. The Governor, through the agency of the
10 Department of Labor created by section 81-101, shall have power:

11 (1) To foster, promote, and develop the welfare of wage
12 earners;

13 (2) To improve working conditions;

14 (3) To advance opportunities for profitable employment;

15 (4) To collect, collate, assort, systematize, and report
16 statistical details relating to all departments of labor,
17 especially in its relation to commercial, industrial, social,
18 economic, and educational conditions and to the permanent
19 prosperity of the manufacturing and productive industries;

20 (5) To acquire and distribute useful information on
21 subjects connected with labor in the most general and comprehensive
22 sense of the word;

23 (6) To acquire and distribute useful information
24 concerning the means of promoting the material, social,
25 intellectual, and moral prosperity of laboring men and women;

26 (7) To acquire and distribute information as to the
27 conditions of employment and such other facts as may be deemed of
28 value to the industrial interests of the state;

1 (8) To acquire and distribute information in relation to
2 the prevention of accidents, occupational diseases, and other
3 related subjects;

4 (9) To acquire and distribute useful information
5 regarding the role of the part-time labor force and the manner in
6 which such labor force affects the economy and citizens of the
7 state; and

8 (10) To administer and enforce all of the provisions of
9 the Boiler and Pressure Vessel Inspection Act, the Employment
10 Security Law, the Farm Labor Contractors Act, the Nebraska
11 Amusement Ride Act, the Nebraska Workforce Investment Act, and the
12 Wage and Hour Act and Chapter 48, articles 2, 3, 4, and 5, and for
13 that purpose there is imposed upon the Commissioner of Labor the
14 duty of executing all of the provisions of such acts, law, and
15 articles.

16 Sec. 25. Original sections 48-719, 48-720, 48-723 to
17 48-725, 48-728 to 48-733, 48-735.01 to 48-741, and 48-743, Reissue
18 Revised Statutes of Nebraska, and sections 48-721, 48-722, 48-726,
19 48-727, and 81-401, Revised Statutes Supplement, 2002, are
20 repealed.